IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1649 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATBHAI LALLUBHAI RATHOD

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 1649 of 2003

MR TR MISHRA for Petitioner No. 1-5

MR SP HASURKAR for Respondent No. 1

MR AD OZA with MR ND GOHIL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/08/2004

ORALJUDGEMENT

1.0. The petitioners by way of this petition have prayed to quash and set aside the impugned showcause notice at annexure-A in each of the petitions and for a further declaration holding that the respondent-Board is legally not entitled to terminate the services of the

petitioners on the ground that they have not obtained a trade certificate of Lineman from the Apprenticeship Board. It is also prayed that the respondent-Board be restrained from terminating or discontinuing the services of the petitioners.

2.0. The short facts as they emerge from the record are that the petitioners are working on the permanent post of Helper in the respondent-Board. It is the case of the petitioners that on the basis having passed the Wireman's Certificate from the National Council for Vocational Training and Wireman Trade test of I.T.I. they were appointed by the respondent-Board. It is the case of the petitioners that the respondent-Board all of a sudden issued showcause notice at annexure-A to the petition, on the ground of suppression of material that they have not passed the requisite examination conducted by the I.T.I. Hence, this petition.

3.0. Mr. T.R. Mishra learned advocate appearing for the petitioners submitted that the said showcause notice is issued under misconception inasmuch as it is true that the petitioners have taken training as Lineman, but subsequently since they could not pass the examination in Lineman, and with a view to see that the petitioners are absorbed in class-IV posts, they were confirmed as Helper wherein the requirement to pass the examination is not there. Mr. Mishra further submitted that the petitioners were neither appointed nor confirmed as Lineman.

3.2. Mr. Mishra further submitted that that after successfully completing the apprenticeship training period, they have submitted the requisite form AP-3, but due to default on the part of the respondent-Board. the petitioners were not able to clear the examination. He submitted that the petitioners were therefore appointed as Helper in the payscale of Rs.2750-70-70-3100-75-3550-85-4315-100-5215 and subsequently they were confirmed on the said post in November, 2001. He further submitted that the since the petitioners were not qualified as Lineman, they were absorbed as Helper, with a view to see that in absence of the Lineman, the petitioners who were trained as Lineman, can help the respondent-Board to carry out the work of Lineman.

3.3. Mr. Mishra submitted that the petitioners were absorbed as Helper in class-IV posts and they working as such on the said post. He further submitted that though there was no such requirement of said certificate, the

respondent-Board issued impugned showcause notice at annexure-A, on the ground that they have not passed the examination conducted by the National Council for Vocational Training. Mr. Mishra further contended that since the petitioners were appointed as Helper, they were not required to pass the said examination. Apart from that several other persons similarly situated persons were also absorbed as Helper and they are working in the respondent-Board.

3.1. As against that Mr. Hasurkar learned advocate appearing for respondent no. 1 has submitted that the petitioners are working as Lineman and since they have not passed the examination from the National Council for Vocational Training, they were required to be removed.

3.2. Mr. Hasurkar has placed reliance on the decision of the Apex Court in the case of U.P. Rajya Vidyut Parishad Apprentice Welfare Association v. State of U.P., reported in A.I.R. 2000 S.C. p.2621, wherein, it has been held that person who has to go through the examination, has only right to consider for appointment and not as a matter of right.

4.0. I have heard the learned advocates for the respective parties and have gone through the record of the petition. The proposition of law laid down by the Apex Court in the aforesaid decision is not governed by the present case inasmuch as the petitioners were not appointed on the post of Lineman, but they were appointed as Helper in the lower rank. Therefore, if the Recruitment Rules for the said post are not prescribing the requirement of such certificate, the petitioners cannot be relieved or retrenched on the ground that they have not produced such certificate. On the contrary, in para 10 of the petition, the petitioners have specifically contended that at the time when they have been given appointments, they have produced all the requisite certificates and after verifying those certificates, they were appointed as Helper. There is no suppression on the part of the petitioners. Therefore, on the alleged ground of apprehension, they cannot be retrenched.

4.1. Looking the facts and circumstances of the case, in my opinion, the showcause notice is issued under misconception, inasmuch as, the petitioners were not working as Lineman, but they are absorbed as Helper and they are working as Helper. Therefore, there cannot be retrenchment or termination on the ground of having not fulfilled the condition of passing of the examination and

producing the said certificate. In my view, the petitioners cannot be removed or retrenched under the guise of non-fulfillment of the requirement for appointment of Lineman.

4.2. In the premises aforesaid, the petition is required to be allowed and it is hereby allowed. The impugned showcause notice at annexure-A in each of the petitions are quashed and set aside. It is, however, clarified that the petitioners will not be absorbed as Lineman, but they will be allowed to continue as Helper and as and when they pass such examination, the respondent-Board shall consider their case for appointment as Lineman. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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